



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 079-26305065

☎ टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)200 /North/Appeals/2018-19/12882 To 12886  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-88-19-20  
दिनांक Date : 14/10/2019 जारी करने की तारीख Date of Issue 04/11/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/A'bad-North/Div-VII/S.TAX-AC-03-18-19 Dated 02/11/2018 Issued by **Assistant Commissioner** , Central GST , Div-VII , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s M/s Rohit & Company**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

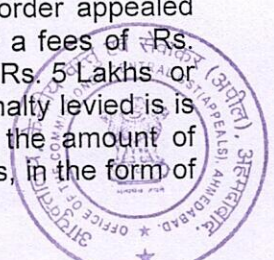
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



**ORDER-IN-APPEAL**

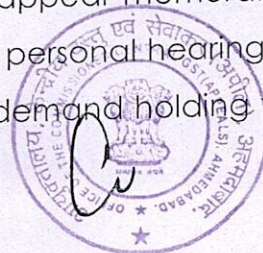
M/s. Rohit & Company, B-605 Nirman, Opp-Havmore Restaurant, Navrangpura, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-original No. CGST/A'bad-North/Div-VII/S.TAX-AC-03-18-19 dated 02.11.2018 (henceforth, "impugned order") issued by the Assistant Commissioner, CGST, Division-VII, Ahmedabad-North (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that based on audit of record maintained by the appellant, a service tax registrant was issued a show cause notice dated 25.01.2018 for recovery of service tax Rs. 26,19,675/- which was found short paid on Goods Transport Agency (GTA) Service under Reverse Charge Mechanism (RCM) which was decided under impugned order confirming the demand along with interest and penalty.

3. Being aggrieved, the appellant preferred this appeal, contesting *inter alia* that the order is non-reasoned, non-speaking and has been passed in violation of principles of natural justice as the adjudicating authority has not clarified how the case laws cited are not relevant; that service tax has been paid by GTA service provider after charging the same from the appellant; that once service tax has been paid in treasury, the department cannot demand it again which may amount to double taxation; that service provider is registered with the department and has filed ST-3 returns and has issued CA certificate showing payment of applicable service tax; that once assessment at the end of service provider is complete/final, the same cannot be reopened; that liability to pay service tax can be transferred under contract; that expense under freight ledger was booked inclusive of service which were paid by service provider the same is not considered by auditors while issuing demand hence the order is in gross violation of natural justice; since the case is not sustainable on merit, penalty cannot be imposed. Etc.,

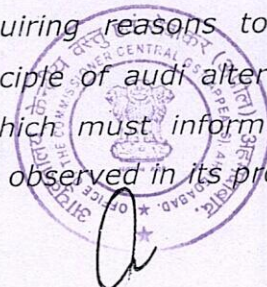
4. In the Personal hearing held on 23.08.2018 Shri Nirav Shah, advocate reiterated the grounds of appeal and provided set of citation for consideration.

5. I have carefully gone through the appeal memorandum and the oral averments made during the course of personal hearing. I find that the adjudication authority has confirmed the demand holding that as per the



terms of the notification No.30/2012-ST dated 20.06.2012, the appellant being partnership firm was liable to discharge service tax on GTA service under RCM. It is one of the arguments of the appellant that the adjudicating authority has not clarified as to how the case laws cited by them are not relevant and hence the order is non-speaking and passed in violation of principles of natural justice. It is also argued by the appellant that expense under freight ledger was booked by them inclusive of service i.e. transportation + service tax (which were paid by them to the service provider) and details were submitted to the adjudicating authority. However the same is not considered and hence the order is in violation of natural justice. In this regard I observe that the adjudication proceedings shall be conducted by observing principles of natural justice. Order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence for fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. The Hon'ble Supreme Court has elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

*" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and*



*mere pretence of compliance with it would not satisfy the requirement of law."*

6. The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. I observe that in so far as the adjudicating authority has not given finding on the submission of the appellant wherein it is claimed that expense booked in freight ledger were inclusive of service tax, the impugned order is incomplete and faulty. Another plea of the appellant is on nonspeaking nature of the impugned order so far it has not clarified how the case laws cited by them are not relevant. I observe that justice in the case can be done only after suitable address by the adjudicating authority to both the above issues raised by the appellant. Therefore, without going into merit, I remand the case back to the adjudicating authority to pass a fresh order after considering above said two issues ensuring principle of natural justice.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

*Gopi Nath*  
(Gopi Nath) 14/11/19

Commissioner, CGST (Appeals)  
Date:

Attested

*(D.A. Parmar)*  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

M/s. Rohit & Company,  
B-605 Nirman, Opp-Havmore Restaurant,  
Navrangpura, Ahmedabad-380009.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Asstt./Deputy Commissioner, CGST Division-VII, Ahmedabad -North.
5. Guard File.
6. P.A.



*Handwritten text, possibly a signature or initials, located in the lower right quadrant of the page.*